Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

ORIGINAL

AT&T CORP.'S PETITION FOR RECONSIDERATION AND CLARIFICATION OF THE *THIRD REPORT AND ORDER*

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SUMMARY

AT&T Corp. ("AT&T") respectfully requests that the Commission reconsider or clarify its *Third Report and Order* in four respects.

First, the Commission should require incumbent LECs to provide access to xDSL-equipped loops when such loops are ordered for customers that are receiving (or will receive) voice service through the UNE-platform. Failure to do so will severely impede competition not only in the provision of advanced services, but also in the mass market provision of voice services, because it will leave CLECs effectively unable to provide bundles of voice and data services to compete with those that the incumbents are uniquely able to offer. Indeed, developments since AT&T filed its original comments in this proceeding sharply underscore this competitive threat. Several incumbent LECs have shown that they are unwilling to provide CLECs with the operational procedures and support necessary to enable a CLEC efficiently to combine UNE-platform voice service with CLEC-provided advanced data services, and are even refusing to provide their own xDSL service to CLEC UNE-platform voice customers.

Second, the Commission should reconsider the exception to the requirement that incumbent LECs offer access to unbundled local switching – *i.e.*, that incumbent LECs need not offer the switching element when CLECs are serving end users with four or more lines in a density zone 1 pricing area in the top 50 Metropolitan Statistical Areas ("the four-line rule"). The four-line rule is arbitrary because it does not reflect the economic and operational realities in the market. The Commission made the switching element available to end users with three lines or fewer because of the impairment of competition caused by the extensively manual "hot-cut" loop provisioning process. As shown below, however, CLECs cannot economically bypass those processes with alternative arrangements unless the end user has at least eight lines. The Commission should therefore replace the four-line rule with an eight-line rule. Moreover,

regardless of whether the Commission modifies the four-line rule, the Commission should clarify that (1) an "end user" is a single retail customer of a CLEC, even if more than one customer resides at a single physical address; (2) an end user is defined by a single physical address; and (3) the limitation applies separately to each CLEC, so that incumbent LECs must provide the ULS element to each requesting CLEC on up to three (or, if modified, seven) lines at each address for each customer, even in situations where the exception applies.

Third, the Commission should clarify that when a CLEC purchases an unbundled loop, the incumbent LEC may not, absent the CLEC's request, remove any of the incumbent LEC's equipment attached to that loop, including equipment that is used for loop termination, interfacing with inside wire, or providing other essential services, such as remote testing. This clarification is compelled by the Commission's holdings that "the loop network element . . . include[s] all features, functions, and capabilities of the transmission facilities, including . . . attached electronics," *Third Report and Order*, ¶ 167, and that a CLEC purchasing unbundled loops should be able to gain access to "the *entire* loop," *id.* ¶ 171 (emphasis added). This clarification also is necessary to assure that CLECs who obtain unbundled loops have the ability to monitor and maintain the performance on those facilities. Removal of such termination, interfacing, and testing equipment by the incumbent LEC would serve no legitimate purpose, but instead would be exclusively designed to raise the CLEC's costs and to impair its ability to provide service to its customers.

Fourth, the Commission should clarify the terms of the incumbent LECs' duty to provide customized routing before they may withdraw OS/DA as an unbundled network element. In particular, the Commission should clarify that (1) an incumbent LEC may not withdraw OS/DA as a UNE until it demonstrates that, upon a CLEC's request, it can timely implement methods of

customized routing in a nondiscriminatory manner; (2) disputes regarding the availability of a customized routing alternative should be referred to the state commission, and during the pendency of any such disputes, OS/DA must continue to be provided as a UNE; (3) incumbent LECs must provide advance notice of any discontinuation of OS/DA as a UNE and establish reasonable transition periods during which an incumbent must continue to provide access to its OS/DA at TELRIC rates; and (4) incumbent LECs may not impose unreasonable terms upon any customized routing alternative, such as Ameritech's recent demand that competing carriers (or their OS/DA providers) establish collocation in every office where customized routing is requested.

Finally, because of the critical importance of the first two issues in particular to CLECs' ability to enter and compete in local markets, AT&T asks that the Commission give those issues urgent and expedited consideration.

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Pursuant to section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") respectfully submits this petition for reconsideration and clarification of the Commission's *Third Report and Order*.[1] AT&T requests that the Commission reconsider and/or clarify the *Third Report and Order* in four respects.

I. UNBUNDLED ACCESS TO EQUIPPED LOOPS IN CONJUNCTION WITH THE PURCHASE OF THE UNE-PLATFORM IS CRITICAL BOTH TO VOICE AND ADVANCED SERVICES COMPETITION.

In the *Third Report and Order*, the Commission found that "competitors are impaired in their ability to offer advanced services without access to incumbent LEC facilities." *Third Report and Order*, ¶ 309. But apart from one narrow exception,[2] the Commission declined to

[1] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, 1999 WL 1008985 (Nov. 5, 1999) ("*Third Report and Order*").

[2] The Commission ordered incumbent LECs to "provide requesting carriers with access to unbundled packet switching" when they were unable to collocate DSLAMs in remote terminals, because in that situation, the Commission found, "competitors are effectively precluded altogether from offering xDSL service if they do not have access to unbundled packet switching." *Third Report and Order*, ¶ 313. As discussed in the text, the additional exception sought by AT&T for unbundled access for xDSL-equipped loops in combination with the UNE-
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provide unbundled access to packet switching. It explained that "given the nascent nature of the advanced services marketplace, we will not order unbundling of the packet switching functionality as a general matter." *Id.* ¶ 306. In so holding, the Commission failed to address AT&T's request for unbundled access not to "packet switching functionality as a general matter," but more narrowly to an xDSL-equipped loop when ordered for a customer that is receiving (or will receive) voice service through use of the UNE-platform ("UNE-P"). *See* AT&T Comments at 77, 80-82; AT&T Reply Comments at 153-55. Similarly, in purporting to consider the impact of its decision on competition only in the "advanced services marketplace," the Commission overlooked the serious competitive harm to mass-market competition for voice services that flows from the inability of competing carriers effectively to provide bundles of voice/data services to compete with those that the incumbent LECs are uniquely able to offer to the mass-market.

The Commission should reconsider its unexplained decision not to provide CLECs with unbundled access to an xDSL-equipped loop as part of the UNE-platform. Such access would serve both to "open local markets to competition" and to "encourage rapid introduction of local competition to the benefit of the greatest number of customers." *Id.* ¶ 309. Indeed, such access is essential if new entrants in the market for voice service are to compete effectively on a mass-market scale with incumbent LECs, which are the only carriers today that can widely offer consumers a combined package of voice and xDSL service. Not only are carriers such as Bell Atlantic, SBC, and U S WEST already using xDSL technologies to offer both voice and data

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platform is equally necessary to avoid "effectively precluding" AT&T and other CLECs from providing combined voice/data services on a mass-market basis.

services to a huge embedded base of voice customers,[3] but they are using every tactic imaginable to ensure that potential competitors will not be able to match their bundled offerings to the mass market. Thus, competition in the markets both for advanced services and for voice services will be irreparably impaired if incumbent LECs remain the only carriers that can offer a complete package of local, xDSL, and (upon FCC approval of an incumbent LEC's section 271 application) long-distance services.[4] Because of the exceptional importance of this issue to competition and market entry, AT&T respectfully requests expedited reconsideration of it.

A. Unbundled Access To xDSL-Equipped Loops For UNE-P Is Essential To Mass Market Competition.

In declining to provide competing carriers with unbundled access to "packet switching functionality as a general matter." *Third Report and Order*, ¶ 306, the Commission relied chiefly on its finding that the market for advanced services was a "nascent" one, *id.* ¶ 317, where unnecessary regulation might serve only to "stifle burgeoning competition," *id.* ¶ 311. The Commission explained that incumbent LECs and their competitors were each in the "early stages

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[3] *See Third Report and Order*, ¶ 315; *see also* SBC Press Release, "SBC Reports Strong Fourth-Quarter, Full-Year Results," (Jan. 25, 2000) (available at http://www.sbc.com/News_Center/article.html?query_type=article&query=20000125-01); Ivan Seidenberg, "Broadband Changes Everything," speech delivered at Fall Internet World Conference (Oct. 7, 1999) (available at http://ba.com/speeches/1999/Oct19991007002.html); U S WEST Press Release, "U S WEST 4th Quarter Earnings Rise 6.4% on Strong New Product Growth," (Jan. 26, 2000) (available at http://www.USWEST.com/news/012600.html) ("[W]e have aggressively won about 85 percent of the DSL customers in our region. And the way we've begun bundling products has improved customer retention and satisfaction, driven increased per-customer revenue, and helped improve product penetration").

[4] *See* Goldman Sachs Investment Research Report, "The Race to Build the Broadband Kingdom," dated August 12, 1999 at 26 ("In order to make their services 'sticky,' DSL carriers must have the ability to bundle services to offer the cost-cutting advantages of having all products – data, voice, and Internet access – over a single copper line. A carrier's success will ultimately be determined by its ability to deliver local, long distance, and Internet access over the same pipe").

of packet switch deployment," *id.* ¶ 308, that incumbent LECs do not possess "significant economies of scale in their packet switching compared to the requesting carriers," *id.*, and that "[c]ompetitive LECs and cable companies appear to be leading the incumbent LECs in their deployment of advanced services," *id.* ¶ 307. From this, the Commission reasoned "that requesting carriers have been able to secure the necessary inputs to provide advanced services to end users in accordance with their business plans." *Id.*

The Commission failed to consider, however, one important respect in which requesting carriers have been denied the "necessary inputs" to carry out their business plans. Carriers attempting to compete with incumbent LECs on a mass market scale through the use of UNE-P need access to xDSL-equipped loops in order to match the bundled offerings of voice and data service that the incumbent LECs today are uniquely positioned to provide. None of the rationales that the Commission offered for refusing to provide unbundled access to packet switching generally apply to this narrow and critically important exception.

Most fundamentally, access to UNE-P that includes an xDSL-equipped loop is crucial to competition for both voice and data services. AT&T is prepared to compete, on the merits, to offer competitive "one-stop shopping" solutions to meet customers' demand not only for voice services, but also for bundled services that include xDSL. But to provide such competition on a mass-market scale, AT&T must be able effectively to combine its UNE platform-based voice offerings with xDSL. *See* AT&T Comments at 80-82.[5] As the Commission's *Third Report and*

[5] AT&T is also investing billions of dollars to acquire and upgrade cable facilities to support two-way communications, but as the Commission well knows, this expensive process will take time to complete and will still not enable AT&T to offer ubiquitous facilities-based competition. Even after AT&T's merger with MediaOne is approved, AT&T will reach fewer than 30 percent of all U.S. multi-channel video programming households, and an even smaller percentage of all U.S. households.

Order confirms, competing carriers have no practical alternative today to the platform for widely offering voice service to the mass market, especially to residential customers. *Third Report and Order*, ¶¶ 253, 273, 296. And AT&T is diligently attempting to bundle its UNE-P voice service with an offer of xDSL service, to be provided either over its own xDSL assets or in partnership with a third party.

Incumbent LECs, however, are denying AT&T the "necessary inputs," *id.* ¶ 307, to provide such a bundled offer. By insisting that CLECs provide bundled voice/data service over a second, separate loop rather than through UNE-P, incumbent LECs are imposing the very "collocation costs and delays" that the Commission acknowledges constitute an "impair[ment]" of CLECs' ability to offer both voice and advanced services. *Id.* ¶ 309. Notably, in the unique context of a bundled voice/data offer to an existing incumbent LEC customer, insistence on use of a second line would require a hot cut that disrupts the customer's service – thus eliminating one of the chief advantages of using UNE-P to serve the mass market.[6] As a practical matter, absent unbundled access to an xDSL-equipped loop, AT&T and other CLECs "are effectively precluded altogether," *Third Report and Order*, ¶ 313, from making such a bundled voice/data

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[6] Although, as a technical matter, a CLEC could offer customers a combined package of voice/data services through use of a second loop, for serving the mass-market that option is infeasible. For example, although providing data services alone over a second loop does not require a hot-cut, providing a voice/data bundle over a second loop *would* require a hot cut, and "the customer's voice service" *would* be "disconnected," *see Third Report and Order*, ¶ 310, thus defeating one of the chief advantages to using the platform to provide voice service. It is simply not economical for CLECs to provide mass-market voice services through the use of physically separate, unbundled loops as opposed to loops that are provided as part of the platform. *Id.* ¶¶ 246, 273. Adding data service does not change matters. As the Commission found in the *Line Sharing Order*, "[i]t is not economical for competitive LECs to self-provision or purchase the entire loop as a second line just to obtain access to the high frequency portion of the loop." Third Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Implementation of the Local Competition Provisions of the*
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service widely available when UNE-P is employed to provide the voice portion of the bundle. Thus, the same standard that the Commission employed to create an exception for unbundled access for remote terminals, *id.*, requires an exception for bundled UNE-P voice/data offerings as well.

B. Recent Developments Confirm The Need For Unbundled Access To xDSL-Equipped Loops For UNE-P.

Developments since AT&T filed its comments in this proceeding dramatically underscore how severely the lack of unbundled access to xDSL-equipped loops in conjunction with UNE-P impairs AT&T's ability to offer both voice and data services on a mass-market scale.

First, some incumbent LECs have now made it abundantly clear that they are unwilling to provide CLECs with the operational procedures and support necessary to enable a CLEC to combine UNE-P voice with CLEC-provided advanced data services in an efficient manner that does not unnecessarily disrupt the retail customer. For example, SBC has frustrated AT&T's attempts to cooperate with a data CLEC, IP Communications, Inc. ("IP Communications"), to provide an integrated bundle of voice and data services over a single copper loop using UNE-P in Texas. Specifically, SBC declined to provide IP Communications with any realistic procedures it could use to provision xDSL on a UNE-P line provided by another CLEC.[7] Then,

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Telecommunications Act of 1996, CC Docket Nos. 98-147, 96-98, FCC 99-355, 1999 WL 1124073, ¶ 41 (FCC rel. Dec. 9, 1999) ("*Line Sharing Order*").

[7] *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas*, CC Docket No. 00-4, Opposition of AT&T Corp., Declaration of C. Michael Pfau and Julie S. Chambers ("Pfau/Chambers Decl.") (attached hereto, with selected exhibits only, as Exhibit B), ¶¶ 36-43 (filed Jan. 31, 2000). SBC stated that in order to provide the services on a single loop (as SWBT does today), IP Communications would be required to (1) order a *new* loop for xDSL (instead of using the customer's existing loop), (2) submit a *second* order for an unbundled port to connect the back end of the splitter to
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when orders were submitted in an attempt to add xDSL capability to an existing AT&T UNE-P line, SBC rejected them, with only the most cryptic of explanations.[8]

Similarly, in proceedings before the New York Public Service Commission, Bell Atlantic took the position that a CLEC using UNE-P that sought to offer advanced data services would be required to order a new loop and an unbundled port, after which Bell Atlantic would presumably disconnect the existing UNE-P line.[9] And even though the Administrative Law Judge overseeing the New York proceedings has encouraged Bell Atlantic to forgo insistence on collocation by the voice provider and a hot cut,[10] Bell Atlantic has (1) reserved all of its legal rights, (2) insisted that once a splitter is introduced, the voice service being provided by the voice CLEC is technically no longer UNE-P, and (3) contended that numerous (but unspecified) OSS and other technical issues would make it difficult to effectuate a customer's ability to obtain xDSL and UNE-P service on the same line.[11]

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the customer port, after which (3) SBC would disconnect the existing UNE-P line. This unwieldy process, of course, would entail significant expense and delay by imposing needless circuit rearrangements, and also create the risk of significant service disruption for the customer. *Id.* ¶ 38.

[8] *See* Pfau/Chambers Decl. ¶ 42.

[9] *See* Proceeding on the Motion of the Commission to Examine Issues Concerning the Provision of DSL Services, Case No. 00-C-0127 ("*xDSL Collaborative*"), Bell Atlantic New York Letter to the New York at 2-3 (dated January 10, 2000); *see also id.* at 1 (claiming that "the xDSL collaborative should not become engaged at this time in an extended analysis of alternative scenarios that do not involve the sharing of a BA-NY POTS voice line by a data CLEC") (attached hereto as Exhibit C).

[10] *See xDSL Collaborative*, Letter of Judge Stein to Active Parties (dated January 20, 2000) (attached hereto as Exhibit D).

[11] For all practical purposes, the OSS and operational support necessary to deliver DSL on UNE-P are identical to those implicit in line-sharing between the incumbent LEC and a data LEC. *Cf. Line Sharing Order*, ¶ 67. This has been effectively acknowledged by both Bell
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Second, the impairment of CLECs seeking to provide UNE-P voice service is exacerbated by the refusal of some incumbent LECs to provide their xDSL services to CLEC UNE-P voice customers. For example, in September 1999, an SBC customer in Texas, who had been using SBC's local voice service and xDSL service combined over a single, copper local loop, decided to switch his local voice service to AT&T. The customer placed his order to change his local voice service to AT&T, which forwarded it to SBC as an ordinary request for UNE-P local service. SBC filled the order, and the customer proceeded to use AT&T local voice service and SBC data service on the same line. Subsequently, however, the customer was contacted by SBC and informed that his xDSL service must be disconnected unless he switched his voice service back to SBC. Faced with this Hobson's choice, the customer – who was an AT&T employee – returned to SBC as his local voice provider.[12] Subsequent calls to SBC have confirmed that this experience is not an isolated event; SBC will not provide its xDSL service to customers who decline to choose, or to keep, SBC as their voice carrier.[13] Similarly, recent calls to Bell Atlantic in New York indicate that it will not make its xDSL service available to AT&T UNE-P customers unless they switch their voice service back to Bell Atlantic.

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Atlantic and SBC (*see, e.g.*, Pfau/Chambers Decl. ¶¶ 30, 31 & n.29), but it has had no impact on either company's willingness to support the arrangement.

[12] Pfau/Chambers Decl. ¶ 29. The customer's ability to receive both AT&T local voice service and SBC xDSL service debunks any notion that there are technical reasons why the xDSL technology SBC has employed must be linked to the carrier that provides the voice service. *Id.* ¶ 30.

[13] *See* "Minutes From January 19th SBC 13-state OSS xDSL Plan of Record Collaborative Meeting - Arkansas, Kansas, Missouri, Oklahoma, Texas," at 21 (dated Jan. 27, 2000) (noting SBC's position that "FCC Line Sharing order specifically excludes UNE-P from line sharing requirements" in response to CLEC request to add xDSL capability to UNE-P) (attached hereto, in relevant part, as Exhibit E).

Incumbent LECs are fully aware that their continuing monopoly control over the local loop – and their unique ability today to use that loop to offer their captive local customers a combined voice/data bundle – gives them an extraordinary and unfair competitive advantage in the markets for data services, for voice services, and for bundled packages of services. As SBC Chairman Whitacre recently boasted, "only SBC will have all the pieces" needed to provide the range of services that consumers want and expect.[14] To take full advantage of this unique leverage, SBC and Ameritech have now each announced that they are "waiving" equipment and installation charges and "slashing" monthly fees in order to "accelerate penetration" in the DSL consumer market[15] and lock in their local customers potentially for years to come.[16] Thus, the holding company that controls almost half the local service lines in this country today is moving quickly to exploit its control over essential xDSL-related inputs not only to prevent advanced services competition from AT&T and others, but also to perpetuate its monopoly control over the market for local voice services. And this competition-limiting strategy is being rapidly adopted by other incumbent LECs.

C. Unbundled Access To xDSL-Equipped Loops For UNE-P Will Promote Competition

Given these circumstances, the Commission should reconsider its unexplained decision not to provide CLECs the ability to combine UNE-P with unbundled access to xDSL-equipped

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[14] SBC Communications, Inc., *SBC Launches $6 Billion Broadband Initiative*, Press Release (Oct. 18, 1999) ("*SBC Pronto Press Release*"), attached to Pfau/Chambers Decl. as Attachment 2.

[15] Telecommunications Daily, page 7, February 15, 2000.

[16] Peter J. Howe, *Flag Dropped in Race to Wire U.S. for Speed: AOL Deal Seen Driven By Providing 'Broadband' Net Access*, The Boston Globe, at D1 Jan 20, 2000 ("[I]t is generally conceded that whoever gets a broadband customer first . . . will likely keep that customer for years") (attached to Pfau/Chambers Decl. as Attachment 10).

loops, as AT&T has requested. To begin with, the Commission's decision to classify the equipment that allows a single copper loop to carry both voice and high-speed data (Digital Subscriber Line Access Multiplexer or DSLAM) as part of the switching element rather than the loop element is inconsistent with its definition of the loop and serves no meaningful purpose. The Commission has defined the loop to include "attached electronics, including multiplexing equipment," *Third Report and Order*, ¶ 175, that "boost the wire's capacity," *id.* ¶ 176. DSLAMs fall squarely within that definition.[17] Thus, to be consistent, the Commission should treat DSLAMs like any other equipment that enhances the functionality of the loop, and should provide unbundled access to DSLAMs whenever the lack of such access "materially diminishes a requesting carrier's ability to provide the services it seeks to offer." *Third Report and Order*, ¶ 51.

The Commission should also find that access to an xDSL-equipped loop in conjunction with an offer of UNE-P is essential to avoid seriously impairing CLECs' ability to offer bundled packages of voice and data services on a mass-market basis in competition with the incumbent LECs' own rapidly growing bundled offerings. This exception is significantly narrower than the

[17] The Commission's apparent suggestion that the DSLAM incorporates packet switching functionality, *Third Report and Order*, ¶ 303, reflects a misconception. The DSLAM largely performs transmission management and protocol conversion functions. The only reason a packet switch (*e.g.*, an ATM) and data transport must be employed along with the DSL-equipped loop is to separate the CLECs' customer-traffic from the incumbent LEC's customer-traffic so that only the appropriate traffic is handed off to the CLEC's data network, *see* AT&T Comments 81-82 n.175; this need is likely to be temporary, and simply reflects the fact that the DSLAM has not been designed to accommodate a multi-supplier competitive marketplace – a fact that is not surprising because the incumbents were the largest prospective customer for the equipment when it was in the early stages of development. Thus, currently deployed DSLAM equipment was not designed to support a competitive marketplace, and until DSLAMs are capable of supporting more than one service provider on the network side of the DSLAM, the incumbent will need to provide limited unbundled packet switching and data transport sufficient to provide each CLEC subscriber with its data traffic.

unbundled access to packet switching generally that the Commission rejected, and likely could be removed in three years, *see Third Report and Order*, ¶ 151, if the incumbent LECs have fully implemented their line-sharing obligations with respect to UNE-P at that time.[18] By providing UNE-P CLECs with unbundled access to xDSL-equipped loops, the Commission would greatly enhance competition for both voice and data services. Such CLECs could then match any incumbent LEC bundled voice/data package with a bundled package of their own.

Notably, such CLECs would be combining the unbundled xDSL-equipped loop with the CLECs' own data transport and packet-switching network. *See* AT&T Comments 81-82, n.175. Far from discouraging investment by either CLECs or incumbent LECs, this would introduce a significant measure of true facilities-based competition into a market that would otherwise be dominated exclusively by the incumbent LECs' offerings. Consumers and competition would clearly benefit from the introduction of such a choice of providers of bundled voice/data services. Conversely, to deny unbundled access to xDSL-equipped loops will severely limit customer choice. Many customers who wish both to have high-speed Internet access and to change to a CLEC for their voice service will have to choose between the two. There is simply no warrant for "rob[bing] consumers of market choices," *Line Sharing Order*, ¶ 56, by denying CLECs the ability to compete on a mass-market scale with an offer of both voice and data services.

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[18] AT&T has separately petitioned for expedited clarification and, if necessary, reconsideration, of the Commission's *Line Sharing Order*. *See Petition of AT&T Corp. For Expedited Clarification Or, In the Alternative, For Reconsideration*, CC Docket Nos. 98-147, 96-98 (filed Feb. 9, 2000). But even if the Commission grants AT&T the relief it seeks in that proceeding, AT&T would continue to be impaired in its ability to offer a bundle of voice (UNE-P) and data services until the BOCs have fully implemented their line-sharing obligations with just, reasonable, and non-discriminatory terms and procedures. Thus, unbundled access to xDSL-
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II. THE COMMISSION SHOULD AMEND THE UNBUNDLED LOCAL SWITCHING EXCEPTION SO THAT IT APPLIES ONLY TO CUSTOMER LOCATIONS WITH EIGHT OR MORE LINES, AND IN ALL EVENTS IT SHOULD OTHERWISE CLARIFY THE RULE.

In the *Third Report and Order*, the Commission properly found that unbundled local circuit switching ("ULS") "meets the 'impair' standard set forth in section 251(d)(2)," and therefore it required incumbent LECs to provide ULS as an unbundled network element. *Third Report and Order*, ¶ 253. The Commission also found, however, that "an exception to this rule is required under certain market circumstances." *Id.* Specifically, if an incumbent LEC provides nondiscriminatory, cost-based access to the "enhanced extended link," it is not required to provide the ULS element "for end users with four or more lines within density zone 1 in the top 50 metropolitan statistical areas (MSAs)" ("the four-line rule"). *Id.*; *see also id.* ¶¶ 276-99. In arriving at the four-line rule, the Commission recognized the operational and economic difficulties associated with having to convert customers through use of the extensively manual "hot cut" process.

The Commission should reconsider its determination that customers with four or more lines will not face those same operational difficulties which caused the Commission to implement the four-line rule in the first place. There is no evidence on the record which suggests that carriers can serve customers with four, five, six, or seven lines through anything other than the manual conversion "hot cut" process. The illogical consequence of the Commission's decision is that carriers are impaired when three hot cut conversions are required, but not impaired when four, five, six, or seven hot cuts are required. Consequently, the Commission

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equipped loops would remain appropriate under the Commission's impair standard at least until that time.

should increase the four-line rule to eight lines or more in order to more accurately reflect the practical and operational realities of the marketplace. Moreover, because of the significance of this issue and its impact on CLECs' ability to compete, the Commission should decide this matter on an expedited basis.

And whether the Commission modifies the four-line rule or not, it should clarify the exception in three respects: *First*, it should clarify that an "end user" is a single retail customer of a CLEC, even if more than one customer resides at a single physical address. *Second*, it should clarify that that an end user is defined by a single physical address. In other words, if a single customer has three lines each at fifteen different addresses (and consequently may receive a single aggregated bill for its current service provider for forty-five lines), that customer is eligible to receive unbundled switching at each of its fifteen locations. *Third*, it should clarify that the limitation applies separately to each CLEC, so that incumbent LECs must provide the ULS element to each requesting CLEC on up to three (or, if modified, seven) lines at each address for each customer, even in situations where the exception applies.

A. The Commission Should Replace The Four-Line Rule With An Eight-Line Rule.

The Commission should modify the ULS exception, because the current four-line rule does not reflect the actual economic and operational considerations that new entrants face when they assess the viability of aggregating multiple loops at a customer's location. Because the Commission is employing a rule based upon the number of loops a CLEC serves for a customer in the area subject to the switching limitation, such a rule should reflect the economics associated with serving that location with facilities other than individual voice grade local loops. As shown below, unless the Commission modifies the exception so that it applies only to customer

locations with eight or more lines, the Commission's rule will impair CLECs' ability to serve a substantial percentage of business customers (*i.e.*, those with four to seven lines).

The Commission adopted the four-line rule based on its conclusion that CLECs were using their own switches to serve "medium and large business[es]" but not "mass market customers, which largely are residential customers." *Third Report and Order*, ¶ 291. The Commission specifically concluded that "without access to unbundled local circuit switching, requesting carriers are impaired in their ability to serve the mass market." *Id.* As the Commission noted, "a requesting carrier is materially diminished in its ability to offer service to mass market customers without access to unbundled switching because it will face materially greater costs, materially greater delay, and will lack the same ubiquitous reach as the incumbent LEC's network." *Id.* ¶ 296. While the Commission was not explicit regarding the basis for establishing the current three line threshold, it is nevertheless clear that these impairments stem from the fact that CLECs subjected to a hot cut process encounter severe impairments in converting customers unless the loop conversion can occur on a project-managed basis, as occurs when a customer's loops are converted to a single facility that carries multiple loops. Thus, the line concentration level at which it becomes feasible to employ multiplexed loop facilities should provide the basis for limiting the availability of the local switching element, to the extent any limitation at all is applied.

Although the Commission thought the distinction between "mass market" customers and "medium and large business customers" was determinative, the Commission asserted that no party in the proceeding had "identifie[d] the characteristics that distinguish medium and large

business customers from the mass market." *Id.* ¶ 291.[19] The Commission arbitrarily picked a distinction that differentiated between customers with three lines versus customers with four lines, without citation and without ever explaining how a carrier would be impaired by having to provision a customer utilizing three hot cuts, but would not be impaired by having to utilize four hot cuts. There was no evidence or suggestion made on the record that anyone could or would use anything other than individual voice grade loops to provision end users with four rather than three lines. Instead, the Commission opined that a four-line rule would "capture a significant portion of the mass market," for two reasons. *Id.* ¶ 293. *First*, the Commission stated that the four-line rule would capture virtually all of the residential market, because the Commission "believe[d]" that residences rarely have as many as three or four lines. *Second*, the Commission surmised (without support) that "small businesses are likely to use the same number of lines as many residential subscribers." *Id.* The Commission admitted that its four-line rule would likely be "overinclusive or underinclusive," but it stated that in its "expert judgment" – which it admitted was based on no evidence – the rule would capture the distinction between the mass market and medium and large businesses. *Id.* ¶ 294.

The four-line rule is arbitrary and should be reconsidered, because it bears no relationship to the actual economic tradeoffs that a new entrant faces in considering whether or not it is economically rational to aggregate voice grade loops onto a higher capacity facility.[20] As shown

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[19] In fact, the record clearly showed that the purchase of a DS1 loop facility reduces the CLEC's transport cost disadvantages relative to the incumbent LEC and also diminishes the competitive disadvantages inherent in the loop provisioning process. *See* Letter from Robert W. Quinn, Jr. to Magalie Roman Salas, p. 4 & n.2, dated August 19, 1999 ("AT&T August 19 Ex Parte"). Therefore, a rule eliminating the availability of ULS where the CLEC is purchasing a DS1 loop facility was supported by the record – unlike the arbitrary four-line rule.

[20] *See* AT&T August 19 Ex Parte at 2 ("The distinctions proposed by the ILECs, whether drawn as a business versus residence split or based on a number of lines (or a combination of both of (continued . . .)

in the accompanying affidavit of Mr. Richard Chandler (attached hereto as Exhibit A), a customer must, on average, have at least eight lines before it becomes economically feasible to bypass the individual loop hot-cut provisioning processes that would otherwise be applicable and which has already been shown to be unworkable for addressing the "mass market" customers. As explained more fully in the Chandler Affidavit, once a customer has sixteen or more lines at a location, it is generally practical for the customer or carrier to use a DS1 loop facility, which allows the CLEC to avoid the cumbersome individual loop hot cut provisioning processes that the Commission has found impair the ability of CLECs to compete without the ULS element. Chandler Aff. ¶ 4. While basing the switching limitation solely on whether or not a DS1 loop is employed is justifiable, the Commission is likely aware that newer DSL technology is becoming available that may ultimately permit CLECs to efficiently aggregate loops for customers with as few as eight lines. *Id.* ¶ 5-9.

There is no economic rationale, however, for limiting a CLEC's ability to employ unbundled local switching to serve customer locations with fewer than eight lines. CLECs can now serve such customers only through the standard hot-cut provisioning of analog loops. Thus, as an economic and operational matter, small businesses with four to seven lines are in the same position as customers with three or fewer lines at a location. As the Commission has found, CLECs in that situation are "impaired" in their ability to compete with the incumbent LEC. *Third Report and Order*, ¶¶ 267-71, 296. New entrants therefore face the same "materially greater costs, materially greater delay," and "service quality impediments" in serving customers

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(. . . continued)
those distinctions), have little to do with the factors that really impair CLECs in providing telecommunications services to end users.").

with four to seven lines that the Commission has acknowledged impairs the ability of CLECs to compete for "mass market" customers. *Id.* ¶ 296.

The anticompetitive impact of the four-line rule is significant, because it effectively forecloses competition for a substantial set of business customers. More than 20 percent of all business customers in density zone 1 locations have between four and seven lines. Chandler Aff. ¶ 11. The Commission should therefore expeditiously replace the four-line rule with an eight-line rule. Rather than an arbitrary, bright-line rule that is clearly "underinclusive," the Commission should adopt a rule that reflects the actual economic and operational realities that truly distinguish larger business customers from residential and smaller business customers. Even at this higher line limitation for unbundled local switching, almost half of the business lines served by density zone 1 offices in the top 50 MSAs (expressed on a voice grade equivalency) will be ineligible for unbundled local switching functionality provided at TELRIC prices.

B. The Commission Should Clarify The ULS Exception.

The Commission should also clarify the ULS exception in three respects, whether or not it modifies the rule as argued above. *First*, it should clarify that, for purposes of determining whether an end-user has the requisite number of voice grade lines (*see* 47 C.F.R. § 51.319(c)(1)(B)), an end-user should be defined in terms of individual customers at individual addresses. Thus, if there are multiple end users at a single physical location, each customer should be treated as a separate "end user" for purposes of the ULS exception. *Second*, the Commission should make clear that the converse is also true: if a single business customer has multiple physical locations in an area, each location should be also treated as a separate "end user" for purposes of the rule. The reason for this is simple: a CLEC in that situation cannot take advantage of economic or operational efficiencies across those locations. Therefore the

incumbent should not be permitted to aggregate an end user's lines across multiple locations for purposes of limiting CLECs' access to ULS.

Third, the Commission should clarify that incumbent LECs are obligated to provide the ULS element for each requesting CLEC for up to three (or, if modified, seven) voice grade lines for each customer, even in cases where the exception applies. The distinction with respect to voice grade lines is important because of the growth of high speed Internet access. Clearly, counting lines employing DSL technologies where no connection to the circuit switched network is likely (which is true for all DSL technologies except ADSL) would serve no practical purpose. Moreover, once a CLEC has obtained ULS for a particular customer, the incumbent should not be permitted to change that service arrangement without the CLEC's consent, regardless of whether the customer adds more lines in the future. Clearly the addition of a line at a customer's location, that may result in the total lines served by the CLEC exceeding the local switching line limit, should not cause the pre-existing service arrangements (*i.e.*, those potentially served using unbundled local switching) to be disrupted or repriced.

The alternative would be an economic, administrative, and operational nightmare. Indeed, if ULS lines are limited to such levels, CLECs will not be able to economically support alternative service arrangements for the reasons described above. Thus, the only purpose of applying the exception in this manner would be to preserve the incumbent LECs' advantages of incumbency. Moreover, customers, especially business customers, add and subtract lines frequently. As a result, without the proposed clarification, CLECs and their customers could suddenly find themselves without the ability to have ULS for *any* of their lines, with the

attendant prospect of service disruption as the ULS element is withdrawn.[21] *See, e.g., Third Report and Order*, Separate Statement of Commissioner Harold Furchtgott-Roth, p. 3. Such a result would wreak havoc on competitive neutrality. Therefore the Commission should expeditiously adopt the proposed clarification.

III. THE COMMISSION SHOULD CLARIFY THE INCUMBENT LECS' LOOP UNBUNDLING OBLIGATIONS.

AT&T supports the vast majority of the Commission's conclusions regarding the provisioning of unbundled local loops, subloops, and network interface devices ("NIDs"). *See Third Report and Order*, ¶¶ 163-241. The Commission should, however, clarify that when a CLEC purchases an unbundled loop, the incumbent LEC may not, absent the CLEC's request, remove any of the incumbent LEC's equipment attached to that loop, including equipment that is used for loop termination, interfacing with inside wire, or providing other essential services, such as remote testing. This clarification is compelled by the Commission's holdings that "the loop network element . . . include[s] all features, functions, and capabilities of the transmission facilities, including . . . attached electronics," *id.* ¶ 167, and that a CLEC purchasing unbundled loops should be able to gain access to "the *entire* loop," *id.* ¶ 171 (emphasis added). This clarification also is necessary to assure that CLECs who obtain unbundled loops have the ability to monitor and maintain the performance of those facilities. Moreover, removal of such termination, interfacing, and testing equipment by the incumbent LEC would serve no legitimate

[21] In the alternative, if the ULS element price were suddenly changed to "market prices," the CLEC could find that the economics of serving the customer are materially changed with little or no advance notice or opportunity to react.

purpose, but instead would be exclusively designed to raise the CLEC's costs and to impair its ability to provide service to its customers.[22]

IV. THE COMMISSION SHOULD CLARIFY THE TERMS OF THE INCUMBENT LECS' DUTY TO PROVIDE CUSTOMIZED ROUTING BEFORE THEY MAY WITHDRAW OS/DA AS AN UNBUNDLED NETWORK ELEMENT.

Citing evidence of a "wholesale market in the provision of OS/DA services and opportunities for self-provisioning" by competing carriers, the Commission held in the *Third Report and Order* that incumbent LECs need not offer unbundled access to their OS/DA services, so long as they "provide customized routing" to requesting carriers that use unbundled switching. *Third Report and Order*, ¶¶ 441, 462-63.[23] It is important, however, that the Commission clarify the terms of the incumbents' obligation to "provide customized routing" and the steps they must take before withdrawing OS/DA as a network element.

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[22] The Commission also should clarify that an incumbent LEC may not deny access to subloops simply because the business relationships concerning the provision of those subloops have not yet been resolved by the carriers. In the *Third Report and Order*, the Commission held that the failure to provide such access would "materially diminish[] a requesting carrier's ability to provide services that it seeks to offer" by "rais[ing] entry costs, delay[ing] broad-based entry, and limit[ing] the scope and quality of the competitive LEC's service offerings." *Id.* ¶¶ 205, 209. Indeed, the Commission found that "loop facilities, including subloop elements, are the most time-consuming and expensive network element to duplicate on a pervasive scale." *Id.* ¶ 211. However, many existing interconnection agreements and statements of generally available terms do not establish the business relationships that will control the provisioning of these critical network elements. This presents an immediate danger that incumbent LECs may seek to further delay the development of local competition by refusing to provide subloops until the carriers have resolved these business relationships.

[23] The Commission has repeatedly affirmed that incumbent LECs already have the duty to provide customized routing pursuant to section 251(c)(3) because it is "is technically feasible" in most switches and is one of the "features, functions and capabilities" of the unbundled switching element. *See Local Competition Order*, ¶¶ 412, 418; *Third Report and Order*, ¶ 244 & nn.474-75; *see also Application of BellSouth Corp. et al. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket 98-121, ¶¶ 221-27 (1998) ("*Second BellSouth Louisiana Order*").

Customized routing "permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent" and thereby "to specify that OS/DA traffic . . . terminate at the requesting carrier's OS/DA platform or a third party's OS/DA platform." *Third Report and Order*, ¶ 441 n.867. The Commission correctly noted that, where competing carriers are not using their own switching, "the lack of customized routing effectively precludes [them] from using alternative OS/DA providers." *Id.* ¶ 463; *see also id.* ¶ 462 ("customized routing is necessary to access alternative sources of OS/DA"). Thus, the basis for the Commission's withdrawal of OS/DA as a UNE – competing carriers' ability to provide their own OS/DA services or to obtain them in the wholesale market – is absent unless an incumbent LEC in fact can "provide customized routing." *Id.* ¶¶ 462-63. Because the availability of customized routing is an essential prerequisite to CLECs' use of alternative OS/DA services, the Commission should clarify, in four critical respects, the showing incumbents must make to demonstrate that customized routing is in fact available to CLECs before OS/DA may be withdrawn as an unbundled network element.

First, the Commission should clarify that an incumbent LEC may not withdraw OS/DA as a UNE until it demonstrates that, upon a CLEC's request, it can timely implement methods of customized routing in a nondiscriminatory manner.[24] As the Commission has found in the

[24] The Commission should also clarify that CLECs may request customized routing through any technically feasible method, including *either* line class codes ("LCC") *or* Advanced Intelligent Network ("AIN"). Of the two, LCC is generally preferable, because that method is more broadly available and is less costly to implement. LCC-based routing is implemented through software table updates in the incumbents' end office switches, and after the initial implementation, no additional changes are needed. In contrast, AIN was not developed to support normal call routing and does not work well with high volume calling. AIN requires a query to a remotely located database for every call (with associated charges for each "dip"). This can result in significant post-dial delay or even failed call attempts, which is likely to be discriminatory when compared to the incumbent's own operations.

context of section 271, an incumbent is "providing" an item when it has a "concrete and specific legal obligation to furnish" the item and when "it demonstrates that it is *presently* ready to furnish" the item in "quantities that competitors may reasonably demand and at an acceptable level of quality."[25] Such a showing may be made either with "operational evidence" or with "testing." *Id.* The same standard should apply here. Thus, the incumbent's customized routing architecture must be fully tested and accepted by the CLECs before it is deployed in the incumbent's switches.[26] Once the architecture has been accepted, the incumbent and competing carriers should develop a mutually agreeable schedule showing the timeframe required to convert all eligible switches.[27] Once the last scheduled conversion has been implemented, the incumbent may withdraw access to its own OS/DA as a UNE under section 251(c)(3).

Second, the Commission should provide that disputes regarding the availability of a customized routing alternative should be referred to the state commission. While the state commission is determining those disputes, the incumbent should be required to continue to provide nondiscriminatory cost-based access to its own OS/DA as a UNE. Without such

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[25] *Application of Ameritech Michigan To Provide In-Region, InterLATA Services In Michigan*, CC Docket 97-137, 12 FCC Rcd. 20543, ¶ 110 (1997) ("*Ameritech Michigan Order*").

[26] Likewise, because competing carriers are specifically permitted to obtain access to UNEs at "any technically feasible point," 47 U.S.C. § 251(c)(3), the Commission should also clarify that incumbents must permit CLECs to route OS/DA calls to any existing trunking arrangements the CLEC specifies. In addition, the Commission should clarify that the incumbent must be required to implement customized routing in tandem switches so that CLECs may specify that OS/DA calls should be routed using existing tandem architectures. Finally, the nonrecurring costs of any such reconfigurations should be absorbed by the incumbent, as its cost for the right to withdraw OS/DA as a UNE.

[27] Of course, if customized routing is not technically feasible in a particular switch, the incumbent has not provided customized routing, and the incumbent is obligated to provide nondiscriminatory access to its own OS/DA as a UNE for such switches.

protections, competing carriers may be entirely precluded from providing their customers with OS/DA services while regulatory proceeding are being conducted.

Third, the Commission should clarify that incumbent LECs must provide advance notice of any discontinuation of OS/DA as a UNE and establish reasonable transition periods during which an incumbent must continue to provide access to its OS/DA at TELRIC rates. These provisions will ensure that there is no disruption in OS/DA service to customers during the transition.

Fourth, the Commission should clarify that incumbent LECs may not impose unreasonable terms upon any customized routing alternative, such as Ameritech's recent demand that competing carriers (or their OS/DA providers) must establish collocation in every office where customized routing is requested. The time for such gamesmanship is long past, and Commission should issue a strong message that such unreasonable conditions will not be tolerated. Such conditions clearly violate the incumbents' statutory duties,[28] and they preclude a finding that an incumbent has "provide[d] customized routing," as the *Third Report and Order* requires. Therefore, any incumbent that seeks to impose such a condition should not be permitted to withdraw OS/DA as a UNE.

Ameritech's recent conduct provides a striking example of why the Commission should not permit incumbents to withdraw OS/DA unless customized routing is in fact available as a practical matter. *See Ameritech Michigan Order*, ¶ 110. Despite its statutory obligations, Ameritech recently informed AT&T that its UNE-P offerings "require that Ameritech be able to

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[28] An incumbent's duty to provide customized routing, as with any other network element, includes the obligation to provide access "at *any* technically feasible point" and on terms that are "just, reasonable and nondiscriminatory." 47 U.S.C. § 251(c)(3); *see also* 47 C.F.R. §§ 51.307, 51.311, 51.313.

cross-connect the custom routing trunk port to collocation to route OS/DA to another provider. This collocation could be the CLEC's, the OS/DA provider, or a third party with collocation space." *See* Letter of Paul Monti, Ameritech, to James Weber, AT&T, at 2 (Feb. 8, 2000). Ameritech's claim is wholly spurious, and is not designed "for any productive reason," but just "to impose wasteful costs" on CLECs. *AT&T Corp.* v. *Iowa Utils. Bd.*, 119 S. Ct. 721, 738-39 (1999).

When CLECs use UNE-P to serve customers, there is no technical reason why they (or their OS/DA providers) need to establish collocation in order to provide their own OS/DA services. Rather, all that is required is nondiscriminatory access to customized routing – *i.e.*, the ability "to designate the particular outgoing trunks" used to carry OS/DA traffic. *Third Report and Order*, ¶¶ 441 n.867, 462-63. As the Commission has recognized, such trunk designation can – and indeed should – be accomplished electronically, "just as" an incumbent LEC "has done for its own customers." *See Second BellSouth Louisiana Order*, ¶¶ 224-25. Thus, Ameritech's attempt to impose a collocation requirement is both technically unnecessary and discriminatory, in violation of the Act and Commission Rules.

CONCLUSION

For the foregoing reasons, the Commission should grant AT&T's petition for reconsideration and clarification. In addition, because of their urgent competitive significance, the Commission should act on the issues addressed in Parts I and II on an expedited basis.

Respectfully submitted,

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